

### REMARKS/ARGUMENTS

Favorable reconsideration of this application in view of the above amendments and in light of the following discussion is respectfully requested.

Claims 1-31, 33, 34, 37, 38, and 59-68 are pending, with Claims 12-14 and 17 being withdrawn from consideration. Claim 24 is amended; Claims 32, 35, 36, and 39-58 are canceled without prejudice or disclaimer; and Claims 66-68 are newly submitted. No new matter is added.<sup>1</sup>

In the outstanding Office Action, Claims 1-11, 15, 16, 18-21, and 59-64 were rejected under 35 U.S.C. § 103(a) as unpatentable over JP 63-129512 (Hereinafter “JP ’512”); Claims 22 and 23 were rejected under 35 U.S.C. § 103(a) as unpatentable over JP ’512 in view of Dreschler et al. (U.S. Patent No. 6,071,503, hereinafter “Dreschler”); and Claims 24-38 and 65 were rejected under 35 U.S.C. § 103(a) as unpatentable over JP ’512 in view of JP 63-111810 (Hereinafter “JP ’810”).

Claims 39-58, directed to non-elected inventions, are canceled. Applicant reserves the right to present claims directed to the non-elected inventions in a divisional application, which shall be subject to the third sentence of 35 U.S.C. § 121.<sup>2</sup>

The outstanding Office Action improperly relies on two foreign language documents, JP ’512 and JP ’810, in rejecting the pending claims without providing an English translation of these documents. M.P.E.P. § 706.02(II) recognizes that references uncovered in searching the claimed subject matter of a patent application often include English language abstracts of

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<sup>1</sup> Amended Claim 24 recites limitations previously introduced in Claim 32; and new Claims 66-68 find support at least at paragraphs 41-48 of the specification as originally filed.

<sup>2</sup> “A patent issuing on an application with respect to which a requirement for restriction under this section has been made ... shall not be used as a reference ... against a divisional application.” See also MPEP § 804.01.



underlying documents, such as technical literature or foreign patent documents which may not be in the English language. However, M.P.E.P. § 706.02(II) also states that “if the document is in a language other than English and the Examiner seeks to rely on that document, *a translation must be obtained so that the record is clear as to the precise facts the Examiner is relying upon in support of the rejection.*” (Emphasis Added).

The Office Action does not rely on English language abstracts, but instead refers solely to the figures in JP '512 and JP '810. However, the prior art must also be considered as a whole. *W.L. Gore & Associates, Inc. v Garlock, Inc.*, 721 F.2d 1540, 1550 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). “It is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art.” *Application of Wesslau*, 353 F.2d 238, 241 (C.C.P.A. 1965); *Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve*, 796 F.2d 443, 448 (Fed. Cir. 1986), *cert. denied*, 484 U.S. 823 (1987). In this case, a full appreciation of what JP '512 and JP '810 fairly suggest to one of ordinary skill in the art cannot be ascertained because a translation of these references has not been provided. Indeed, even an appreciation of what the elements picked and chosen from the figures of JP '512 and JP '810 fairly suggest cannot be obtained without a review of the portions of JP '512 and JP '810 that describe these elements. Accordingly, the Office Action's reliance on the foreign language documents JP '512 and JP '810 without providing an English translation is improper, and the outstanding rejections are traversed. Should a future Office Action include a rejection based on either JP '512 or JP '810, English language translations of these documents should be



provided so that the record is clear as to the precise facts the Office Action is relying upon in support of the rejection.

Independent Claim 1 recites a case that includes a base part holding a reserve of product, a lid covering the base part, and a sealing element arranged to close in a leak tight manner a space containing the product, at least when the lid is closed. Claim 1 further recites that the sealing element is supported by *a pivot incorporating a ball joint* so that the sealing element is rotatable about at least two mutually perpendicular geometrical axes of rotation.

The Office Action identifies element 15 of Figure 1 of JP '512 as the claimed pivot. The Office Action acknowledges that "JP '512 fails to show the sealing member being supported by a ball joint," but asserts that "it would have been an obvious matter of design choice to construct the pivot as taught by JP '512 with a ball joint, since such modification is well known in the art."<sup>3</sup> M.P.E.P. § 2144.03B states that there must be some form of evidence in the record to support an assertion of common knowledge.<sup>4</sup> In addition, M.P.E.P. § 2144.03A states that "[i]t is never appropriate to solely rely on "common knowledge" in the art without evidentiary support in the record, as the principle evidence upon which the rejection is based."<sup>5</sup> The Office Action inappropriately relies solely on a conclusory statement that replacing an element in a figure (an element that is described in a language other than

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<sup>3</sup> See the outstanding Office Action at page 3, lines 1-3.

<sup>4</sup> See also *In re Lee*, 277 F.3d 1338, 1344-45, 61 USPQ2d 1430, 1434-35 (Fed. Cir. 2002); and *In re Zurco*, 258 F.3d 1379, 1386, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001) (holding that general conclusions concerning what is "basic knowledge" or "common sense" to one of ordinary skill in the art without specific factual findings and some concrete evidence in the record to support these findings will not support and obviousness rejection).

<sup>5</sup> See also, *Zurco*, 258 F.3d at 1385, 59 USPQ2d at 1697 ("[T]he Board cannot simply reach conclusions based on its own understanding or experience – or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record to support these findings.").



English) with a ball joint is “well known in the art.” This rejection is improper and does not include the required evidentiary support.

Further, as noted above, the Office Action has not provided an English translation of JP '512 and the record is therefore unclear as to what JP '512 fairly suggests. Nevertheless, based on the limited facts of record, it is unlikely that the device depicted in Figure 1 of JP '512 would be suitable for its intended purpose if element 15 were to be replaced with a ball joint. Figures 1 and 2 of JP '512 appear to depict a spring-like member 17 interposed between two surfaces that, through compression, allows elements 15 and 16 to linearly translate with respect to each other. A ball joint would not allow this type of relative linear motion. Therefore, it would not be obvious to replace an element that includes a spring that allows two parts to linearly translate with respect to each other with a ball joint that does not. For these reasons, and for the reasons discussed above, the rejection of Claim 1 and the claims depending therefrom based on JP '512 is traversed.

Independent Claim 24 recites a case that includes a base with a first compartment and a second compartment, a lid coupled to the base, and a cover member with a central portion and a peripheral portion. Amended Claim 24 incorporates the features of dependent Claim 32, and recites that the central portion includes *a ball joint in a receptacle*. Independent Claim 33 also recites a case that has a central portion that includes *a ball joint in a receptacle*.

Independent Claim 65 recites a case that includes a base part holding a reserve of product, a lid covering the base part, and a sealing element arranged to close in a leak tight



manner a space containing the product, at least when the lid is closed. Independent Claim 65 further recites that the sealing element is supported by *a pivot incorporating a ball joint*.

As noted above, the Office Action acknowledges that JP '512 fails to show a sealing member being supported by a ball joint. The Office Action also acknowledges that "JP '512 fails to show the cover member being coupled to the lid via a central portion of the cover member, wherein the central portion having a ball joint in a receptacle and the receptacle being attached to the lid via arms."<sup>6</sup> The Office Action attempts to cure this deficiency by applying JP '810, stating that "[i]t would also have been an obvious matter design choice [sic] to construct the central portion as taught by JP '810 with a ball joint, since such modification is well known in the art."<sup>7</sup> However, the Figures of JP '810 relied upon in the rejection do not depict a ball joint of any kind. Once again, the Office Action inappropriately relies solely on a conclusory statement that replacing an element in a figure with a ball joint is "well known in the art." This rejection is improper because it does not include the required evidentiary support. Accordingly, the rejection of independent Claims 24, 33, and 65 and the claims depending therefrom is traversed.

New Claims 66-68 depend from Claim recite additional features that are not disclosed or rendered obvious by the cited references. Claim 66 recites a case that includes a base part holding a reserve of product, a lid covering the base part, and a sealing element arranged to close in a leak tight manner a space containing the product, at least when the lid is closed. The sealing element is supported by a pivot so that the sealing element is rotatable about at

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<sup>6</sup> See the outstanding Office Action at page 5, lines 1-3.

<sup>7</sup> See the outstanding Office Action at page 5, lines 9-10.



least two mutually perpendicular axes of rotation. Claim 66 further recites that the pivot includes (1) a ball joint in a receptacle, (2) a block of elastically deformable material that includes a transverse cross-section that is smaller than a transverse cross-section of the sealing member, or (3) an elastomer material having a local shrinkage defined in an axis (Z) perpendicular to the two at least two mutually perpendicular axes of rotation. None of the cited references, either alone or in combination, disclose or suggest a pivot that includes any of the structural elements (1), (2), or (3). Accordingly, independent Claim 66 and Claims 67 and 68 depending therefrom are believed to be in condition for allowance.

With regard to withdrawn Claims 12-14 and 17, it is respectfully requested that these claims be rejoined and allowed in accordance with MPEP §821.04, as Claims 12-14 and 17 include the subject matter recited in amended independent Claim 1 which is believed to be allowable.

Should the Examiner continue to disagree with the above distinctions, Applicant respectfully requests that the Examiner provide an explanation via Advisory Action pursuant to M.P.E.P. § 714.13 specifically rebutting the points raised herein for purposes of facilitating the Appeal process.

Consequently, for the reasons discussed in detail above, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for formal allowance. Therefore, a Notice of Allowance for Claims 1-31, 33, 34, 37, 38, and 59-68 is earnestly solicited.

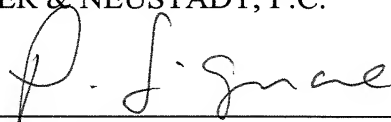


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Should the Examiner deem that any further action is necessary to place this application in even better form for allowance, the Examiner is encouraged to contact the undersigned representative at the below listed telephone number.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.



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Steven P. Weihrouch  
Attorney of Record  
Registration No. 32,829

Customer Number  
**22850**

Tel: (703) 413-3000  
Fax: (703) 413 -2220  
(OSMMN 06/04)

Philippe J.C. Signore, Ph.D.  
Registration No. 43,922